

FILED

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

KIRK RUSSEL MARSH,

Plaintiff,

vs.

THE STATE OF UTAH; JUDGE MICHAEL
EDWARDS; DANA EMMONS,

Defendant

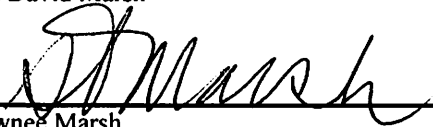
Case No.: 1:24-CV-516

JUDGE PATRICIA TOLLIVER GILES
MAGISTRATE JUDGE IVAN D. DAVIS

KIRK DAVID AND SHAWNEE MARSH SUPPLEMENTAL BRIEF

Dated this 12th of May, 2024.


Kirk David Marsh


Shawnee Marsh

JUDGE PATRICIA TOLLIVER GILES MAGISTRATE JUDGE IVAN D. DAVIS - 1

Kirk David Marsh and Shawnee Marsh brief

May 12, 2024

1. The question has been raised by the State (paragraph 5.2) of a lack of standing for Russel to raise a claim on my behalf. As noted in the original filing, I was not a named party in the subject divorce proceedings. My attachment to the case was through Russel as a third party. My third party standing is explained below. If the Judge rules that I have independent standing and need to be a named party in the suit between Russel Marsh and the State of Utah et. al., please accept this brief as my willingness to do so.
2. I had been voluntarily supporting my grandchildren through a voluntary monthly gift of \$700 for over a year before the trial. When asked by the court, through Russel's attorney, if I would agree to a court mandated \$700, I said no, but that I would continue my voluntary commitment of \$700 to support the family. I had previously agreed with the commissioner to pay for transportation costs for the girls to visit their father earlier that month. Future discussion of travel costs were not raised to me.
3. At trial the judge required Russel to pay \$700 in child support, knowing full well his entire monthly income was \$60, basically requiring me to be obligated by the court. Additionally the court added 1/2 of all medical and work expenses, as well as payment of all future travel expenses to see Russel, without discussing this with me nor obtaining my approval for that obligation. In order to protect Russel and permit visits rather than get into arguments, I chose to cover the obligations. Russel's attorney recommended not appealing because I had no standing in the child custody court, that there was little likelihood of success, and the probable costs that would likely exceed the monthly

payments. Additionally we feared that an appeal would be used to further alienate the girls from Russel.

4. This situation continued until December 2023 when the girls' mother refused to deliver the girls for Christmas vacation, wrongly claiming that she was not required to deliver them until a later time. This action caused us to change plane tickets, adding approximately \$1000 additional dollars to the cost of the travel.

5. I felt the abuse of the situation at least justified not gifting a monthly payment.

Additionally the girls' mother had remarried, had bought a house and then purchased a second house for over \$1.1M (without any recorded liens) to knock down and build a bigger house. Obviously financial need was not a problem and Russel, as a full time student, still has no income. Since the ruling at trial, I have paid \$ in child support including medical and other expenses and \$45,000 in travel expenses.

6. Russel has been able to reestablish a level of relationship with his daughters, so I feel it is time past to fix these injustices.

7. My presumption has been that I had no separate standing to be party to the suit, only through Russel as a third party, as the judgment was officially against him. Third party standing is governed by the Supreme Court ruling in *Kowalski v. Tesmer*. 543 U.S. 125 (2004) The Court said that its cases had held that a party seeking third-party standing must make two showings:

- a. First, we have asked whether the party asserting the right has a "close" relationship with the person who possesses the right.
- b. Second, we have considered whether there is a "hindrance" to the [rights] possessor's ability to protect his own interests.

8. In this case, Russel has a close relationship with me, his father, and that relationship was used by the court to extract the demanded funds
9. Additionally there is a hindrance to my claiming my rights as I was not directly a party to the child custody proceedings. That should meet the Supreme Court elements of proof for third party standing.
10. However, if the State of Utah claims that I need to be added to justify the claim, and the judge rules that I have independent standing, I am willing to do so. Please accept this brief as being added if the Judge so rules.
11. Shawnee Marsh also expresses willingness to be added to the claim.
12. This does not change the underlying facts, violations and substance of the claim.